



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SIDHO PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

CNC, CNR, PSF

### Introduction

This hearing was convened in response to two Applications for Dispute Resolution filed by the Tenant.

In one Application for Dispute Resolution the Tenant applied to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities.

In the other Application for Dispute Resolution the Tenant applied to cancel a One Month Notice to End Tenancy for Cause and for an Order requiring the Landlord to provide services or facilities.

The Agent for the Tenant stated that he does not recall how/why the Dispute Resolution Package relating to the Notice to End Tenancy that is dated June 15, 2021 was sent to the Landlord. The Agent for the Landlord acknowledged receiving this document.

The Agent for the Tenant stated that he does not recall how/why the Dispute Resolution Package relating to the Notice to End Tenancy that is dated June 24, 2021 was sent to the Landlord. The Agent for the Landlord acknowledged receiving this document.

The Agent for the Tenant stated that he does not recall how/why and of the evidence the Tenant submitted to the Residential Tenancy Branch was served to the Landlord. The Agent for the Landlord stated that only evidence the Landlord received from the Tenant was a letter dated June 30, 2021 and a document dated June 09, 2021. The Tenant did not submit a letter dated June 30, 2021 or a document dated June 09, 2021

to the Residential Tenancy Branch. I find that the Tenant has failed to establish any of the evidence the Tenant submitted to the Residential Tenancy Branch was served to the Landlord and I therefore find that none of the Tenant's evidence should be accepted as evidence for these proceedings.

The Agent for the Landlord stated that none of the evidence the Landlord submitted to the Residential Tenancy Branch was served to the Tenant. I therefore find that none of the Landlord's evidence should be accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

#### Preliminary Matter

The Agent for the Tenant stated that the power has been restored to the rental unit and that there is no longer a need for an Order requiring the Landlord to provide services or facilities.

#### Issue(s) to be Decided

Should either Notice to End Tenancy that is the subject of this dispute be set aside?

#### Background and Evidence

The Agent for the Landlord and the Tenant agree that:

- This tenancy began in 2020;
- Rent is due by the first day of each month;
- On June 23, 2021 a One Month Notice to End Tenancy for Cause, dated June 15, 2021, was posted on the door of the rental unit which declared that the Tenant must vacate the unit by June 25, 2021;
- The One Month Notice to End Tenancy for Cause dated June 15, 2021 has been altered to indicate it is a Ten Day Notice to End Tenancy for Cause;

- On June 23, 2021 or June 24, 2021, a One Month Notice to End Tenancy for Cause, dated June 24, 2021, was posted on the door of the rental unit which declared that the Tenant must vacate the unit by July 23, 2021; and
- Both of the aforementioned Notices to End Tenancy have cited similar reasons for ending the tenancy pursuant to section 47 of the Residential Tenancy Act (Act).

The Landlord wishes to end this tenancy, in part, because the Landlord contends the Tenant is smoking cigarettes in the rental unit. The parties agree smoking is not permitted in the unit.

In support of the application to end tenancy on the basis of smoking, the Agent for the Landlord stated that:

- 3 current and 1 former occupant of the rental unit has reported that they are being bothered by the smell of cigarette smoke coming from the rental unit; and
- The smells were reported between January 01, 2021 and July 19, 2021, with the last report being received on July 19, 2021;
- She has received approximately 6 reports in 2021;
- She has spoken with the Tenant and a previous support worker about smoking on several occasions, most recently in June of 2021;
- In May or June of 2021, the Tenant was given written notice not to smoke in the rental unit;
- Whenever the Tenant was spoken to about smoking, she agreed that she would not continue to smoke in the unit.

In response to the application to end tenancy on the basis of smoking, the Tenant submits that she has not smoked in the rental unit since sometime before June 01, 2021.

The Landlord wishes to end this tenancy, in part, because the Landlord contends the Tenant has removed the smoke alarm from the rental unit.

In support of the application to end tenancy on the basis of removing the smoke alarm, the Agent for the Landlord stated that:

- The smoke alarm in the rental unit was removed sometime in May of 2021;
- The Tenant was told to replace the smoke alarm sometime in May of 2021; and
- She does not know if the smoke alarm was replaced.

In response to the application to end tenancy on the basis of the smoke alarm, the Tenant submits that:

- Her worker sometimes removed the smoke alarm while she was cooking because the alarm was activated by the cooking;
- Her worker typically replaced the smoke alarm after she finished cooking;
- The smoke alarm was replaced after the Landlord directed that it be replaced; and
- The smoke alarm has not been replaced since May of 2021.

The Landlord wishes to end this tenancy, in part, because the Landlord contends the Tenant has left the oven on while she is not inside the rental unit.

In support of the application to end tenancy on the basis of leaving the oven unattended, the Agent for the Landlord stated that:

- This occurred on one occasion in May of 2021;
- The oven was left unattended for 2.5 hours;
- The Landlord first became aware that the smoke detector had been removed when the Agent for the Landlord realized the oven had been left unattended;
- The Tenant was advised that she should not leave her oven unattended; and
- She is not aware of the oven being left unattended since this incident.

The Tenant denies leaving the oven unattended.

The Landlord wishes to end this tenancy, in part, because the Tenant is disturbing other tenants by repeatedly asking them for money and cigarettes.

In support of the application to end tenancy on the basis of the Tenant disturbing others, the Agent for the Landlord stated that:

- An occupant of the residential complex has reported that the Tenant repeatedly asks him for money and cigarettes;
- This occupant has asked the Tenant to stop, but she continues to make these requests;
- The occupant has contacted the police to report his concerns; and
- She does not know what actions were taken by the police.

The Tenant stated that she has not repeatedly asked another occupant for money/cigarettes; she has not been asked by another occupant to stop asking for money/cigarettes; and the police have not spoken to her in regard to this allegation.

## Analysis

Section 47 of the *Act* permits landlords to end a tenancy for the following reasons:

- a) the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- (b) the tenant is repeatedly late paying rent;
- (c) there are an unreasonable number of occupants in a rental unit;
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- (g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;
- (h) the tenant
  - (i) has failed to comply with a material term, and
  - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
- (i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [*assignment and subletting*];
- (j) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;
- (k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

(l) the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

On the basis of the undisputed evidence, I find that on June 23, 2021 and/or June 24, 2021, the Landlord served the Tenant with two written notices of their intent to end this tenancy for one or more of the reasons cited in section 47 of the *Act*.

When a landlord wishes to end a tenancy pursuant to section 47 of the *Act*, the Landlord bears the burden of proving there are grounds to end the tenancy.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof will typically fail to meet that burden.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant continued to smoke in the rental unit after June 01, 2021. In reaching this conclusion I was influenced by the Tenant's testimony that she has not smoked in the rental unit since sometime prior to June 01, 2021.

Although the Agent for the Landlord testified that another occupant of the residential complex reported that the Tenant was smoking in the rental unit on July 19, 2021, no evidence from that alleged witness was accepted as evidence for these proceedings. I therefore find that the Landlord has submitted insufficient evidence to establish that the Tenant has smoked in the rental unit at anytime after she was provided with written notice to refrain from doing so.

As the Landlord has failed to establish that the Tenant has smoked in the rental unit at anytime after she was provided with written notice to refrain from doing so, I find that the Landlord does not yet have the right to end this tenancy on the basis of smoking. The Tenant should be aware that if the Landlord can establish that the Tenant smokes in the rental unit at any time in the future, even on one single occasion, the Landlord may have the right to end the tenancy on the basis of smoking.

I find that the Landlord has submitted insufficient evidence to establish that the smoke alarm has been removed since the Tenant was asked to replace the smoke alarm in May of 2021.

As the Landlord has failed to establish that the Tenant has removed the smoke alarm at any time after she was directed to replace the alarm, I find that the Landlord does not yet have the right to end this tenancy on the basis of the smoke alarm. The Tenant should be aware that if the Landlord can establish that the smoke alarm is removed at any time in the future, the Landlord may have the right to end the tenancy.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant has left the oven unattended at any time. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Agent for the Landlord's submission that it was left unattended and the absence of evidence that refutes the Tenant's testimony that it was not left unattended. As the Landlord has failed to establish that the Tenant left the oven unattended, I find that the Landlord has not established grounds to end the tenancy on the basis of the oven being left unattended.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant has bothered another occupant of the residential complex by asking for money/cigarette. In reaching this conclusion I was influenced by the absence of any accepted evidence that corroborates this submission or that refutes the Tenant's testimony that she has not disturbed another occupant. As the Landlord has failed to establish that the Tenant has disturbed another occupant of the residential complex, I find that the Landlord has not established grounds to end the tenancy on the basis of the alleged disturbance.

After considering all of the evidence, I find that the Landlord has failed to establish grounds to end this tenancy pursuant to section 47 of the *Act*. I therefore grant the Tenant's application to cancel the Notices to End Tenancy that are dated June 15, 2021 and June 24, 2021.

### Conclusion

The Notices to End Tenancy that are dated June 15, 2021 and June 24, 2021 are set aside. This tenancy shall **continue until it is ended in accordance with the. This decision** is made on authority delegated to me by the Director of the Residential Tenancy Branch

under Section 9.1(1) of the Act

Dated: October 21, 2021